

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21787 of 2011

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Rameshwar Prasad Roy, son of Late Udai Roy, resident of Raksa, Ward No. 3,
P.O. - Raksa, P.S. Karja, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Industries, Govt. Of Bihar, Patna
3. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
4. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
5. The Executive Director, Regional Office, Bihar Industrial Area Development Authority, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, Advocate
For the State	:	Mr. R.B.N. Singh, AC to GA-10
For BIADA	:	Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 17-04-2019

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for BIADA.

In the present case, the petitioner is seeking the pay scale of Rs.5000-8000/- with effect from 01.01.1996 on implementation of Sixth Pay Revision Commission Report as it has been adopted by the BIADA vide Memo No.1667 dated 22.09.2006 as the Head Typist/Junior Selection Grade Typist.

The petitioner was appointed as a Typist in the year 1977 was granted promotion as Junior Selection Grade Typist/Head Typist and, accordingly, he was receiving the scale of pay of Rs.1400-2600/-. The State Government has accepted the recommendation of the Six Pay Revision Commission Report and,



accordingly, at the later stage, the BIADA has also accepted and implemented the recommendation of Six Pay Revision Commission Report and, accordingly, the pay scale of the petitioner has been fixed at the scale of Rs.4000-6000/-, but the counsel for the petitioner submits that he was given the wrong replacement scale of pay. As per the scale provided in the Sixth Pay Revision Commission Report, he is entitled to pay scale of Rs.5000-8000/-, which is replacement scale of Rs.1400-2600/-. It has further been said that the pay scale of the petitioner was earlier fixed in the scale of Rs.5000-8000/-, which is apparently clear from Annexure-2 he continued to receive the same pay scale, for about eight months and, later on, the Government has revised his pay scale to his prejudice, lower down to the scale of Rs.4000-6000/-. He has placed reliance on Annexure-3, has drawn the attention of this Court that for implementation of the Sixth Pay Revision Commission Report, the Finance Department as well as Industries Department granted approval for the implementation of the same as earlier vide letter dated 05.01.2000 moratorium was applied for enforcement of implementation of Sixth Pay Revision on account of bad financial condition of the BIADA, by subsequent letter, the moratorium was withdrawn and it was decided to grant the benefit of the Sixth Pay Revision. As per the



petitioner that certain typists of BIADA were granted the pay scale of Rs. 1400-2600/- but he was granted wrong pay scale of Rs. 1400-2300/- which was later on corrected by the BIADA.

In the present case, only dispute is with regard to entitlement of pay scale of Rs. 5000-8000/- and he has stated that the replacement scale of Rs. 1400-2600/- is the pay scale of 5000-8000/- has specifically placed reliance on the schedule as scale mentioned therein has been implemented in connection with the employees of the State Government, submitted that the pay scale of Rs. 1400-2600/- in Item No. 9 the replacement scale is Rs. 5000-8000/-, so he is claiming the said amount and also he is submitting that he is also entitled for arrears of pay and claiming the arrears of pay w.e.f. 01.04.1997, whereas, counsel for the BIADA has submitted that the scale of pay of Rs. 5000-8000/- was not implemented to the employee of the BIADA, which has been specifically stated in paragraph 11 of the counter affidavit in the following term:

“That it is further submitted pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 is not applicable for the post of typist in BIADA and thus the claim of the petitioner for higher pay scale for the said post i.e. Rs. 5000-8000 is not sustainable on the ground that the said pay scale is applicable to typists of the State Government.”



Learned counsel for the BIADA has further submitted that the petitioner was not holding the post of head typist but he was getting pay scale of Rs. 1400-2600/- in the Junior Selection Grade that does not mean that he was holding the post of Head Typist, he has further submitted that after the implementation of Sixth Pay Revision Commission Report, the fitment has to be made according to the availability of the post in the department or in the organization and, at the same time, in the Sixth Pay Revision, the provision of time bound promotion has been withdrawn as after the implementation of Sixth Pay Revision, there is no such provision for granting the Junior Selection Grade/ Senior Selection Grade, but the replacement scale will be on the post to post basis but the promotion would be on the basis of need basis, in that term, the post is to be identified. As the petitioner was getting the pay scale of Rs. 1400-2600/- its replacement scale is Rs. 4000-6000/-, which is apparently clear from the chart attached with the Office Order No. 1667 dated 22.09.2006 (Annexure 3), where at the top, it is mentioned that by Resolution No. 2538 dated 16.09.2003, the BIADA was created at the end mentions about attachment of annexure. The post under item (Kha) of the Chart having not been sanctioned, but they have been given the benefit of revision of pay scale of Six Pay Revision, in Item No. 13, the



post of typist is there and the pay scale has been given as Rs. 4000-6000/- and it has been mentioned that it is equivalent to the pay scale of Secretariat staff. So in this view of the matter, the BIADA has not done any wrong with the petitioner in granting the pay scale of Rs. 4000-6000/-.

Having considered the rival contentions of the parties, as per the material available on record, BIADA has been constituted in the year 2003, before that, there were three Industrial Areas Authority, first is North Bihar Industrial Area Authority, second is Darbhanga Industrial Area Authority and third is Patna Industrial Area Authority, all were merged together and they have reconstituted as Bihar Industrial Area Authority.

In earlier phase, as the financial condition of the BIADA was not good shape, they have not implemented the recommendation of Sixth Pay Revision Commission Report though they continued to grant the pay scale of Fifth Pay Revision Commission Report, but in the year 2006, after the approval of the Finance Department as well as Industries Department, the recommendation of Sixth Pay Revision has been implemented.

The question, in the present case, is as to whether the petitioner has rightly been given the pay scale of Rs. 4000-6000/- or he should have been given pay scale of Rs. 5000-8000/-. It is



not in dispute that the petitioner when he he was granted the pay scale of Rs. 1400-2600/- was the Junior Selection Grade pay scale, but he was not holding the post of Head Typist and after implementation of the Sixth Pay Revision, the provision of the Junior Selection Grade Typist/Senior Selection Grade Typist has been withdrawn and, accordingly, the petitioner was made the typist as it is apparently clear from the representation that as he was getting the pay scale of Rs. 1400-2600/-, he should be declared to be the Head Typist and, accordingly, his pay scale should be fixed in the replacement scale. The representation itself consists the answer that the petitioner was not holding the post of the Head Typist, but he was a simple typist. The BIADA has specifically stated in the counter affidavit that the BIADA has not granted the pay scale of Rs. 5000-8000/- and the scale of pay, which has been placed reliance by the petitioner in Item No. 9 of the schedule, is meant for Head Typist and not made for the Typist and the pay scale, which has been implemented, is attached with the letter no. 1667 dated 22.09.2006, specifically shows that the replacement scale of the typist is Rs. 4000-6000/-.

In such view of the matter, this Court does not find any error in the pay fixation of the petitioner.



So far the prayer with regard to arrears of pay w.e.f. 01.04.1997 onward is concerned, on this issue, the BIADA has taken a decision that on account of financial condition, the benefit of arrears of salary would not be granted, though one person has been granted the arrears, but the decision was taken later on, and that decision has not been interfered with in C.W.J.C. No. 28 of 2015 which has been approved by the Division Bench in **2017 (2) PLJR 355**, as has been informed to this Court that the matter is pending before the Hon'ble Supreme Court in which notices have been issued in Special Leave to Appeal (C) No(s). 19457-19458 of 2018.

In such view of the matter, the entitlement of the arrears of salary will be subject to the result of aforesaid case. If any employee is granted the arrears of pay, certainly the petitioner will also be entitled for the same.

With this observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

V.K.Pandey/
S. Katyayan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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